

# ZONING RECLASSIFICATION APPLICATION

## Harford County Board of Appeals

Bel Air, Maryland 21014

MAR 23 2007

Shaded Area For Office Use Only

Case No. 162  
Date Filed 3/19/07  
Hearing Date \_\_\_\_\_  
Pre-Conf. \_\_\_\_\_  
Receipt \_\_\_\_\_  
Fee 1240.00

### Note

1. It is required that the applicant have a pre-filing conference with the Department of Planning and Zoning to determine the necessary additional information that will be required.
2. The burden of proof in any rezoning case shall be upon the Petitioner.
3. Any application in a zoning case and any amendment thereto shall contain specific allegations setting forth the basis for granting of the request.
4. Petition must contain names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.
5. Application will be reviewed for completeness within ten (10) working days of submittal. Applicant will be notified by mail of completeness of application.

### Petitioner

Name Shelter Development, LLC Phone Number \_\_\_\_\_ Call Attorney \_\_\_\_\_

Address 218 North Charles Street - Suite 200 Baltimore MD 21201  
*Street Number Street State Zip Code*

Property Owner Robert R. Cassilly, Jr., et al Phone Number \_\_\_\_\_ Call Attorney \_\_\_\_\_

Address 306 Mauser Road Bel Air MD 21015  
*Street Number Street State Zip Code*

Contract Purchaser Shelter Development, LLC Phone Number \_\_\_\_\_ Call Attorney \_\_\_\_\_

Address 218 North Charles Street - Suite 200 Baltimore MD 21201  
*Street Number Street State Zip Code*

Attorney/Representative John J. Gessner Phone Number (410) 893-7500

Address 11 South Main Street Bel Air MD 21010-7776  
*Street Number Street State Zip Code*

## Land Description

Address and Location of Property (with nearest intersecting road) 63.86 AC Route 7 & Route 543

Subdivision \_\_\_\_\_ Lot Number \_\_\_\_\_ Acreage/Lot Size \_\_\_\_\_ Election District 1

Existing Zoning B-1/GI Proposed Zoning B-3/R-3 Acreage to be Rezoned 68.36 +/-

Tax Map No. 57 Grid No. 4F Parcel 108 Deed Reference 5894/0691

Critical Area Designation N/A Land Use Plan Designation Intensity High

Present Use and ALL improvements: Vacant

Proposed Use (If for subdivision development, proposed number of lots, type of dwellings, and type of development.

Example: Conventional, Conventional with Open Space, Planned Residential Development) \_\_\_\_\_

Is the property designated a historic site, or does the property contain any designated or registered historic structures?

No \_\_\_\_\_ If yes, describe: \_\_\_\_\_

Estimated Time Requested to Present Case: 30 minutes

## Required Information To Be Attached

(Submit three (3) copies of each):

- (a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.
- (b) A statement of the grounds for the application including:
  - (1) A statement as to whether there is an allegation of mistake as to the existing zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.
  - (2) A statement as to whether there is an allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change.
- (c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.
- (d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:
  - (1) Location of site.
  - (2) Proposed nature and distribution of land uses, not including engineering drawings.
  - (3) Neighborhood (as defined by the Applicant).

- (4) All surrounding zoning.
- (5) Proposed public or private capital improvements.
- (e) Previous individual rezonings and recommendation since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions.
- (f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc.
- (g) Property deed and a boundary survey prepared and sealed by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property.
- (h) Private restrictions or covenants, if any, applicable to subject parcel.
- (i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted.
- (j) Availability of public water and sewer.

## Additional Information as Required by the Department of Planning and Zoning

- (a) Existing and proposed libraries, parks, schools, fire and police departments.
- (b) Demonstration of compatibility of the proposed use with existing and proposed development for the area.
- (c) Traffic impact study.
- (d) Economic and Environmental impact studies.
- (e) Estimated population for existing and proposed petitioned area and neighborhood, as defined.
- (f) Soils analysis.
- (g) Aerial photograph.

CASE 162 MAP 57 TYPE Rezoning

ELECTION DISTRICT 03 LOCATION Route 7 and Route 543

BY Shelter Development, LLC 218 North Charles Street, Suite 200, Baltimore 21201

Appealed because a rezoning pursuant to Section 267-12A of the Harford County Code to rezone 68.36 acres from a B1/G1 District to a B3/R3 District requires approval by the Board.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my/our knowledge, information, and belief.

BY:

Shelter Development, LLC

Signature of Applicant/Owner

Date

Witness

Date

Signature of Contract Purchaser/Owner

Date

Witness

Date

Signature of Attorney/Representative

Date

Witness

Date

Director of Planning and Zoning

Date

Zoning Staff

Date

15 : 3/12/07  
2 : 22831  
205030

ATTACHMENT A-1  
FOR ZONING RECLASSIFICATION APPLICATION  
SHELTER DEVELOPMENT, LLC, PETITIONER

The Zoning Reclassification Application, in Part IV, requests the following information. Petitioner's submission is as follows:

"(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation."

Petitioner: See attachment A-2, List of Property Owners.

"(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation."

Petitioner: Petitioner alleges that a mistake was made as to the existing zoning. The 2004 Land Use Plan classifies the subject property as high intensity. The subject property is currently zoned GI, General Industrial district and B-1 Neighborhood Business district. The County Council was mistaken that the surrounding area would develop for commercial/industrial use. Instead, the area has developed with residential uses. The size and shape of the developable areas on the subject property are not conducive to commercial or industrial development. The County Council failed to consider this fact in zoning the property in 1997. Both the B1 and GI zoning on the subject property are inconsistent with this land use classification. All of the B1 zoned portion of the subject property should be rezoned B3 as shown on Attachment A-3. A portion of the GI zoned

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portion of the subject property should be rezoned B3 as shown on Attachment A- 3. The remaining GI zoned portion of the subject property should be rezoned R3, Urban Residential District as shown on Attachment A-3.

"(2) A statement as to whether there is an allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change."

Petitioner: N/A

"(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion."

Petitioner: The subject property is classified as "High Intensity" on the 2004 Master Plan. The proposed R3, Urban Residential Zoning and B3, General Business Zoning are both consistent with that classification.

"(d) A sketch shall be submitted by the applicant at the time the application is filed. The sketch shall illustrate the proposed general nature and distribution of land uses but need not include engineered drawings.

Petitioner: See Attachment A-3, entitled "CASSILLY COMPANY PROPERTY REZONING PETITION CONCEPT PLAN" dated March 9, 2007, prepared by Frederick Ward Associates.

"(e) List previous rezonings and recommendations since the effective date of the 1997 Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions."

Petitioner: N/A

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"(f) Map showing the environmental features of the property (wooded, field, stream, flood plain, etc)"

Petitioner: See Attachment A-4, entitled "CASSILLY COMPANY PROPERTY ENVIRONMENTAL FEATURE" dated March 9, 2007, prepared by Frederick Ward Associates.

"(g) Copy of the location site plan, property deed, and a boundary survey prepared and sealed by a registered surveyor. Include dimension of area requested to be rezoned if only a portion of the property."

Petitioner: See Attachments A-3, A-5 (Deed), A-6 (Subdivision Plats) and A-7 (Condemnation Petition)

"(h) Copy of site plan or location map indicating the neighborhood (as defined by the applicant), all surrounding zoning, and any proposed public or private capital improvements."

Petitioner: N/A Petitioner reserves the right to amend the application in this regard.

"(i) Private restrictions or covenants, if any, applicable to subject parcel."

Petitioner: None

"(j) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted."

Petitioner: None.

# DEVELOPMENT SUMMARY

MAP: 51 GRID: 4F PARCEL: 108

REFERENCES: 5894/691

DEED PLATS: HDC 37/18 & HDC 37/19

SENT ZONING: B-1 (CORNER OF BELCAMP AND OLD PHILADELPHIA)

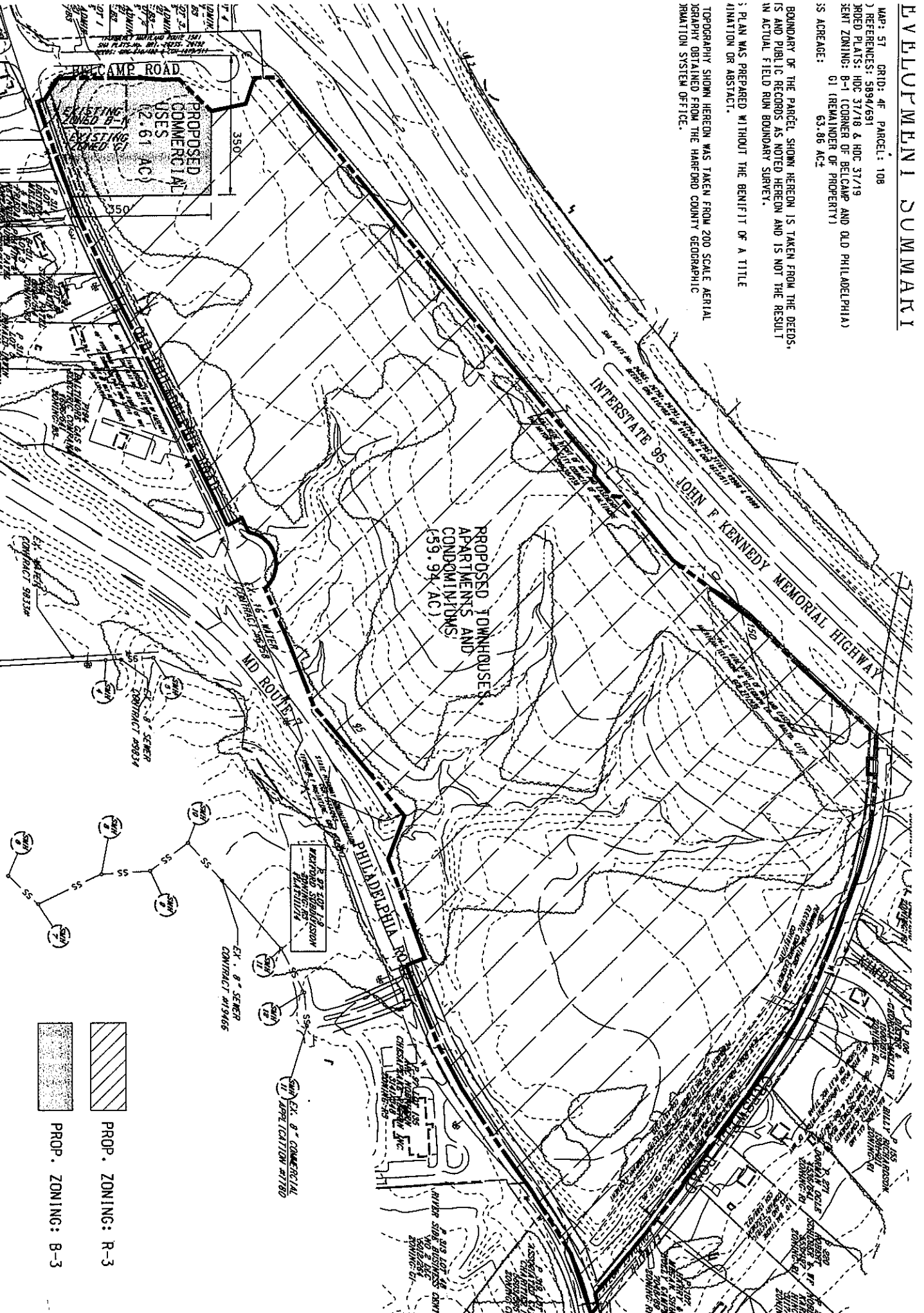
51 (REMAINDER OF PROPERTY)

55 ACRES: 63.86 AC±

BOUNDARY OF THE PARCEL SHOWN HEREON IS TAKEN FROM THE DEEDS, PLATS AND PUBLIC RECORDS AS NOTED HEREON AND IS NOT THE RESULT OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.

THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE SURVEY OR ADJUST.

TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM 200 SCALE AERIAL PHOTOGRAPHY OBTAINED FROM THE HARBOR COUNTY GEOGRAPHIC INFORMATION SYSTEM OFFICE.



**DAVID R. CRAIG**  
HARFORD COUNTY EXECUTIVE

**LORRAINE COSTELLO**  
DIRECTOR OF ADMINISTRATION



**C. PETE GUTWALD**  
DIRECTOR OF PLANNING & ZONING

## HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

April 18, 2007

### STAFF REPORT

#### BOARD OF APPEALS CASE NO. 162

**APPLICANT:** Shelter Development, LLC  
218 North Charles Street, Suite 200  
Baltimore, MD 21201

**OWNER:** Robert R. Cassilly, Jr., et al  
306 Mauser Road  
Bel Air, MD 21015

**REPRESENTATIVE:** John J. Gessner, Esquire  
Gessner, Snee, Mahoney and Lutche, PA,  
11 South Main Street, PO Box 1776, Bel Air, Maryland 21014

**LOCATION:** NW corner of MD Route 7 and  
Creswell Road, Aberdeen, MD  
Tax Map: 57 / Grid: 4F / Parcel: 108  
Election District: First (1)

**ACREAGE:** 63.86 acres

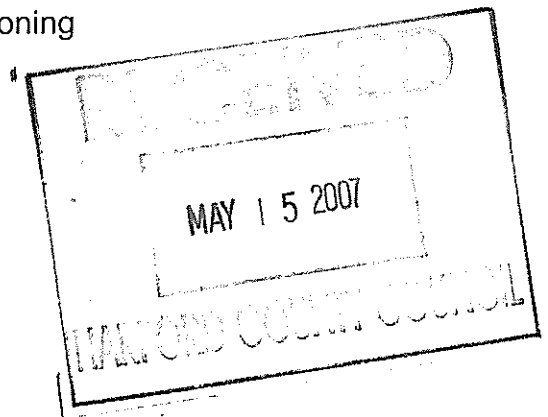
**ACREAGE TO BE ZONED:** 63.86 acres

**EXISTING ZONING:** GI/General Industrial District and B1/Neighborhood Business District

**PROPOSED ZONING:** R3/Urban Residential District and B3/General Business District

**DATE FILED:** March 19, 2007

**HEARING DATE:** May 21, 2007



*Preserving Harford's past; promoting Harford's future*

MY DIRECT PHONE NUMBER IS (410) 638-3103

220 SOUTH MAIN STREET BEL AIR, MARYLAND 21014 410.638.3000 • 410.879.2000 • TTY 410.638.3086 • [www.harfordcountymd.gov](http://www.harfordcountymd.gov)

THIS DOCUMENT IS AVAILABLE IN ALTERNATIVE FORMAT UPON REQUEST.



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### **APPLICANT'S REQUEST and JUSTIFICATION:**

See ATTACHMENT 1.

### **LAND USE and ZONING ANALYSIS:**

#### **Location and Description of Neighborhood:**

The subject property is located on the north side of Philadelphia Road between Belcamp Road and Creswell Road south of Interstate 95. A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 2 and 3).

The Applicant has submitted a map delineating their suggested neighborhood with the Application (Attachment 4). The Department disagrees with the Applicant's suggested neighborhood. The Department defines the neighborhood for the subject property as being all those parcels south of Interstate 95, north of MD Route 7, east of MD Route 543 and west of Stepney Road. The neighborhood also includes all those parcels with frontage along the east side of Stepney Road and the south side of MD Route 7. A map showing the neighborhood as defined by the Department is enclosed with this report (Attachment 5).

#### **Land Use – Master Plan:**

The subject property is located within the Development Envelope as described in the 2004 Master Plan. The predominant land use designation is High Intensity. There are also areas of Medium Intensity and Industrial Employment. The Natural Features Map reflects stream systems and Sensitive Species Project Review Areas (SSPRA). The Belcamp-Riverside Community Center is located at the intersection of MD Route 543 and MD Route 7. The subject property is designated High Intensity, which is defined by the 2004 Master Plan as:

**High Intensity** – Areas within the Development Envelope where residential development occurs at a density greater than 7.0 dwelling units per acre. Major retail commercial centers and highway-related businesses, such as automobile dealerships and home improvement centers, are examples of some of the most intensive uses associated with this designation.

Enclosed with the report are copies of a portion of the 2004 Land Use Map and the Natural Features Map (Attachments 6 and 7).

#### **Land Use – Existing:**

The existing land uses in the neighborhood conform to the overall intent of the Master Plan. There are several new residential communities within the subject neighborhood; including Hollywoods, Seven Trails, Woodlawn and Wexford. These residential communities include single-family dwellings, townhouses, and condominiums. The land uses to the west near the I-

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95 and MD Route 543 interchange include a gas station/convenience store, a restaurant, and a motel. More intensive commercial and industrial uses are located on the south side of MD Route 7.

The subject property is irregular in shape with frontage along Belcamp Road, Creswell Road, and Philadelphia Road (MD Route 7). I-95 forms the northern boundary of the subject property. The subject property also has frontage along a section of Old Philadelphia Road that now ends in a cul-de-sac due to the realignment of MD Route 7.

Prior to 1964, the subject property was a working farm with areas of cropland and pasture. In 1964, the Board of Appeals granted the Cassilly Company a conditional use permit to conduct "landleveling and temporary excavating for Northeast Expressway". The sand and gravel mined from the Cassilly Company Property was used for the construction of the Northeast Expressway (I-95). The construction of I-95 subsequently bisected the Cassilly Company Property. The portion of the Cassilly Company Property that was located on the west side of I-95 was eventually developed into single-family residential lots. After the construction of I-95 and the mining operation ceased, the subject property became densely forested.

The property was subject to a State Highway Administration (SHA) condemnation proceeding from 1988 to 1990. The SHA condemned a portion of the property to allow for the realignment of MD Route 7. The cul-de-sac at the end of Old Philadelphia Road was created as a result of the realignment.

The topography within this area ranges from rolling to steep, especially near the stream valleys. In general, the subject property is moderately sloping from I-95 towards MD Route 7. The embankments along MD Route 7 and Creswell road are steeply sloping from the edge of each roadway as a result of the previous mining operation and the relocation of MD Route 7.

A stream bisects the subject property from north to south with smaller tributary streams emptying into the larger stream. There are large areas of non-tidal wetlands throughout the subject property which are generally associated with the streams. The soil survey map shows hydric soils, potentially hydric soils and highly erodible soils throughout the subject property. Enclosed with the report are a copy of the topography map and the aerial photograph (Attachments 8 and 9).

Enclosed with the report are site photographs (Attachments 10).

### Zoning and Zoning History:

#### Zoning:

The zoning classifications in the area are generally consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning in the area includes R1, R2 and R3/Urban Residential Districts. Commercial zoning in the area includes B1/Neighborhood Business

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District and B3/General Business District. The industrial zoning in the area includes CI/Commercial Industrial District and GI/General Industrial District. The subject property is split zoned B1/Neighborhood Business District and GI/General Industrial District as shown on the zoning map attached to this report (Attachment 11). Approximately 0.58+/- acres of the overall tract is zoned B1/Neighborhood Business District and 63.28+/- acres is zoned GI/General Industrial District.

1957 Comprehensive Zoning Review: In 1957 the subject property was split zoned AG/Agricultural District and B1/Neighborhood Business District. The B1/Neighborhood Business District zoning was located on the northeast corner of the intersection of Belcamp Road and Philadelphia Road (Attachment 12).

1982 Comprehensive Zoning Review: During the 1982 Comprehensive Zoning Review the AG/Agricultural District portion of the subject property was rezoned to GI/General Industrial District. The B1/Neighborhood Business District zoning located on the northeast corner of the intersection of Belcamp Road and Philadelphia Road remained zoned B1 (Attachment 13).

1989 Comprehensive Zoning Review: In 1989 the subject property remained split zoned B1/Neighborhood Business District and GI/General Industrial District (Attachment 14).

1997 Comprehensive Zoning Review: In 1997 the subject property remained split zoned B1/Neighborhood Business District and GI/General Industrial District (Attachment 15).

2005 Comprehensive Zoning Review: The Applicant requested that the subject property be rezoned from B1/Neighborhood Business District and GI/General Industrial District to B3/General Business District and R3/Urban Residential District during the 2005 review. The Applicant requested that the B1 portion of the property be rezoned to B3. The Applicant also requested that the area of business zoning be expanded to include additional acreage within the GI portion of the subject property. The Department and the Planning Advisory Board (PAB) recommended that the entire parcel be rezoned to R3/Urban Residential District. The County Council voted to change the entire subject property to R3/Urban Residential District as recommended by the Department and the PAB. However, the County Executive vetoed the Legislation and the County Council did not override the veto. Therefore, the zoning assigned to the property in 1997 remains in effect. Attached is a copy of the 2005 zoning log and issue map with the breakdown of the acreages associated with that rezoning request (Attachments 16 and 17).

### **BASIS FOR INDIVIDUAL REZONING REQUEST:**

Under Maryland case law, the burden of proof lies with the Petitioner to provide information that there has been a substantial change in the overall character of the neighborhood or that the County made a mistake during the last comprehensive zoning review. It should be noted that the

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Courts have stated that any argument for change cannot be based on existing changes that were anticipated during the last comprehensive zoning review.

### Substantial Change Argument:

The Applicant's are not claiming that a substantial change in the neighborhood has occurred. The department would agree that a substantial change in the neighborhood has not occurred since 1997.

### Mistake Argument:

The Applicant's state that, "Petitioner alleges that a mistake was made as to the existing zoning. The 2004 Land Use Plan classifies the subject property as high intensity. The subject property is currently zoned GI, General Industrial district and B-1 Neighborhood Business district. The County Council was mistaken that the surrounding area would develop for commercial/industrial use. Instead, the area has developed with residential uses. The size and shape of the developable areas on the subject property are not conducive to commercial or industrial development. The County Council failed to consider this fact in zoning the property in 1997. Both the B1 and GI zoning on the subject property are inconsistent with this land use classification. All of the B1 zoned portion of the subject property should be rezoned B3 as shown on Attachment A-3. A portion of the GI zoned portion of the subject property should be rezoned B3 as shown on Attachment A-3. The remaining GI zoned portion of the subject property should be rezoned R3, Urban Residential District as shown Attachment A-3."

The Department agrees that a mistake has occurred in the zoning of the property. The property was previously designated as Industrial Employment and High Intensity on the 1996 Land Use Plan. The 2004 Land Use Plan now designates the entire property as High Intensity. Additionally, the location of environmentally sensitive areas such as streams, wetlands and steep slopes would make the property difficult to develop industrially. The requested R3/Urban Residential District zoning is appropriate for the subject property and is consistent with the 2004 Land Use Plan.

The Department recommends that the entire subject property be rezoned to R3/Urban Residential District. Rezoning the entire property R3/Urban Residential would eliminate the current split zoning of the property and provide the most appropriate zoning configuration.

### ANALYSIS OF INDIVIDUAL ZONING REQUEST:

#### Conformance with the Master Plan and Land Use Element Plan:

The subject property is designated as High Intensity on the 2004 Master Land Use Map. Therefore, the Applicant's request to rezone the subject property to R3/Urban Residential District is consistent with the Land Use Element Plan. Although the Applicant is requesting to rezone the B1/Neighborhood Business District portion of the subject property to B3/General

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Business District, the Department is recommending that the entire parcel be rezoned to R3/Urban Residential District.

Impact of Requested Rezoning:

The requested rezoning would be consistent with the 2004 Land Use Plan.

**COMMENTS FROM ADVISORY GROUPS:**

History Presevation Commission:


There are no inventoried historic sites on or adjacent to the property.

Planning Advisory Board:

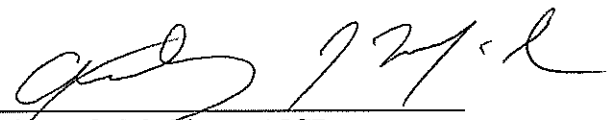
The Planning Advisory Board (PAB) reviewed the request at their meeting on May 9, 2007. The PAB voted 3-0 to recommend that the change in zoning as recommended by the Department be approved (Attachment 18).

**RECOMMENDATION and or SUGGESTED CONDITIONS:**

The Department of Planning and Zoning recommends that the entire 63.86 acres of the subject property be approved for rezoning to R3/Urban Residential District.

  
Shane Grimm, AICP  
Chief, Site Plans & Permits Review

SPG/ASM/jf

  
Anthony S. McClune, AICP  
Deputy Director, Planning and Zoning